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April 14, 1993

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Donna Searcy  
Office of the Secretary  
Federal Communications Commission  
1919 M Street, NW  
Room 222  
Washington, DC 20554

RE: CC Docket No. 93-6  
RM 7736

Dear Ms. Searcy:

Please find enclosed an original and four copies of Cathey,  
Hutton & Associates, Inc.'s Comments in the above-referenced  
proceeding.

Sincerely yours,

Lawrence P. Keller  
Director - Federal Regulatory  
Services

LPK:mcj

Enclosures

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Safeguards to Improve the )  
Administration of the )  
Interstate Access Tariff )  
and Revenue Distribution )  
Process )

CC Docket No. 93-6  
RM 7736

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

COMMENTS OF  
CATHEY, HUTTON & ASSOCIATES, INC.

Cathey, Hutton and Associates, Inc. (CHA), management and cost consultants to the independent telephone industry, hereby comments on several issues raised by the Commission's Notice of Proposed Rulemaking (NPRM), FCC 93-25, released February 11, 1993, in the above-captioned proceeding.

The instant proceeding was initiated to improve the interstate access tariff and revenue distribution process administered by the National Exchange Carrier Association (NECA). (NPRM, ¶ 1) CHA is an active participant on several NECA committees and forums. Moreover, CHA's small telephone company clients have a direct and substantial interest in the Commission's efforts to strengthen NECA's role as administrator of the interstate access tariff, voluntary cost pools and Universal Service Funding mechanism. For these reasons, CHA believes that it is in an excellent position to provide insight

on several issues raised by the NPRM. In particular, CHA comments herein on NECA interpretations of Commission rules, and how such interpretations can be reconciled with cost-study compliance procedures. CHA also urges the Commission to maintain a Subset III majority on NECA's Board of Directors.

## I. DISCUSSION

- A. NECA Should Exercise, and Implement Uniformly, Its Own Independent Judgment When Interpreting Commission Rules, but LECs Should Be Able to Seek Commission Waiver or Clarification Under Procedures That Permit Timely Adjustments to Cost-Studies.

Based on the report of the independent auditor retained by NECA at the Commission's request,<sup>1</sup> the Commission concludes that "NECA must exercise its own independent interpretive judgment [on Commission rules] and then implement its interpretation." (NPRM, ¶ 28) CHA agrees with the Commission's conclusion. It is important for NECA to reach a timely decision based on its informed judgement (with or without informal consultation with Commission staff<sup>2</sup>), and to implement its decision uniformly by requiring appropriate changes to all non-conforming local exchange carrier (LEC) cost studies.

Difficulties arise where a LEC or a group of LECs disagree with a NECA interpretation of a Commission rule. Such carriers have the opportunity to petition the Commission for a waiver or

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<sup>1</sup> See NPRM, ¶ 3.

<sup>2</sup> See NPRM, ¶ 29.

for clarification of the rule. Timing issues, however, can prevent these LECs from recovering costs that might ultimately be allowed as a result of a favorable ruling by the Commission on a LEC petition.

Under current procedures, LEC annual cost studies are due at NECA not later than 7 months following the study period, i.e., by July of the following year.<sup>3</sup> Additionally, carriers can make retroactive corrections to monthly data previously submitted to NECA up to 24 months after the data was initially reported<sup>4</sup>

disputed. Continuing with the above example, if the Commission were to rule favorably on a LEC petition for waiver or clarification in May 1994, the LEC would be precluded from making retroactive adjustments to its monthly data for January 1992 through April 1992 and, thus, would not be able to recover fully its costs for those months.

This problem could be rectified if LECs could make retroactive adjustments covering periods prior to the 24-month window where the Commission rules favorably on a timely filed LEC petition for rule waiver or clarification. For instance, if the Commission were to decide in May 1994 that a NECA rule interpretation requiring a LEC-study adjustment for 1992 was not correct, the affected LEC(s) should be permitted to recover the full study-period amount that was in dispute. To accomplish a full recovery, the 24-month window could be waived or, in the alternative, the LEC should be allowed to recover any revenues lost to the 24-month window within the remaining data months available to it.

In sum, CHA agrees with the Commission that NECA should make reasonable efforts, based on its own independent judgement, to interpret Commission rules and to implement those interpretations uniformly by requiring that adjustments be made to all non-conforming LEC cost studies. If a LEC disagrees with NECA's rule interpretation it can, subsequent to the cost-study adjustment, petition the Commission for a rule waiver or clarification. The

Commission should act on timely filed petitions as soon as practicable, and NECA procedures should be modified to ensure full recovery of the amount in dispute if the Commission ultimately decides in favor of the LEC.

B. The NECA Board Should Retain a Subset III Majority.

The Commission tentatively concludes that at least two outside directors should be on the NECA Board on a permanent basis in order to provide a viewpoint independent from NECA's member LECs. (NPRM, ¶ 5) The Commission invites comment on precisely how many outside directors should be included on NECA's Board and whether the Commission should change the overall composition of the Board. (Id. at ¶ 11)

CHA agrees that the presence of outside directors on NECA's Board affords a valuable independent viewpoint in administering NECA's programs and helping to ensure that those programs comply with the Commission's rules. For this reason, CHA supports the addition of two permanent outside directors to NECA's Board. CHA urges, however, that the Commission retain the current composition for the remainder of the Board that provides for 3 Subset I directors, 3 Subset II directors and 9 Subset III directors.

The Commission states that the Board's principal concern must be compliance with the Commission's rules and that the present configuration may not be optimal to address this concern.


(NPRM, ¶ 11) CHA believes that the addition of two permanent outside directors to NECA's Board will remove any concern over the Board's ability to ensure compliance with the Commission's rules. With this concern removed, there is no reason to jettison the Board's remaining structure which reflects the interests of the larger Subset I and II carriers in the proper functioning of NECA's programs (whether or not these carriers are members of a NECA pool), and which recognizes, by providing them with a Board majority, that NECA's activities have the largest and most direct impact on the smaller Subset III LECs.

## **II. CONCLUSION**

For all of the foregoing reasons, NECA should use its best efforts to interpret and implement the Commission's rules in a consistent and uniform manner. At the same time, NECA's procedures should afford a LEC, which disagrees with a NECA rule interpretation, full recovery of any previously adjusted amounts if the Commission agrees with the LEC's position as set forth in a timely filed petition for rule waiver or clarification. Finally, the Commission should add two outside directors to the NECA Board on a permanent basis, but should otherwise retain the

current Board composition that provides for a Subset III carrier majority.

Respectfully submitted,  
CATHEY, HUTTON & ASSOC., INC.

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